ANSA TEKNIK (M) SDN. BHD.

v.

KENDALIAN BINA SDN. BHD.

HIGH COURT MALAYA, JOHOR BAHRU
ABU MANSOR ALI J
[COMPANIES WINDING-UP NO. 42-48 OF 1988]
13 MARCH 1989

COMPANY LAW: *Winding-up - Grant of adjournments - Refusal to grant - Order for winding-up made.*

The petitioner had filed a petition for the winding-up of the respondent company. The petition had previously been adjourned twice to enable the parties to file affidavits. The petition was adjourned a third time because the file was untraced and because of a request by the solicitors for the respondent. When the petition came up for hearing for the fourth time the respondent's solicitors again requested for an adjournment made via a letter. In a letter the respondent's solicitors stated the reason to be "We are indisposed on the said date owing to prior engagements". The petitioner objected to the request for adjournment.

Held:

[1] The request for adjournment is without merit - it is not clear whether the respondent's solicitors were indisposed (and here there is no medical evidence) or engaged with prior engagements (and no explanation has been given as to where he would be).

[2] The debt on which the petition is based and the debts of the supporting creditors are large.

[3] The Court is satisfied at that stage that the evidence was overwhelming that the respondent could not pay its debts and should be wound up.

[Order accordingly.]

Legislation referred to:
Companies Act 1965, s. 218

For the petitioner - Ong Ban Chai; M/s. Ong Ban Chai & Co.
For the respondent - Paul Ong Teng Kek; M/s. Paul Ong & Associates

JUDGMENT

Abu Mansor Ali J:

On 1 February 1989 on the petitioner's petition I made an order winding up the appellant/ respondent in the absence of Counsel for appellant after refusing Counsel's application for a postponement. The respondent not satisfied with the said decision appeals.

The facts of the case are as follows. In their petition dated 11 April 1988 the petitioner filed a petition for the winding up of the respondent because the respondent is alleged to be indebted to the petitioner in the sum of RM100,003.97 with interest and after the respondent has failed to answer or heed the statutory notice dated 26 November 1987 pursuant to s. 218 of the Companies Act 1965.

The petition was first fixed for hearing in Open Court on 17 August 1988 but it was postponed to 23 November 1988 as the respondent has just filed an affidavit on 13 August 1988 and to give time to petitioner to consider respondent's affidavit. On 23 November 1988 the petition came up for hearing and again it was postponed at the request of parties to file further affidavit. It was then adjourned to 25 January 1989 but as the file was untraced in the morning and also respondent had applied for a postponement, it was then fixed to 1 February 1989 and notice was duly issued on 25 January 1989 itself to parties. Finally when it came up for hearing on 1 February 1989 the petitioner's Counsel Mr. Ong Ban Chai was present but Counsel for the respondent was absent. Mr. Kumar appeared on behalf of Messrs Shearn Delamore & Co. for the supporting creditors.

Mr. Ong Ban Chai objects to the respondent's application for a postponement of this petition. He told the Court that the petition was postponed from 17 August 1988 to 23 November 1988 and to 25 January 1989 and finally to that day (1 February 1989). From the Bar he made a statement that on 17 August 1988 the petition was postponed as parties wanted to settle the matter but there was no settlement. He urged on the Court that it was wrong for the Court to have it postponed again as the matter did not go on 25 January 1989 as partly it was postponed at the request of the respondent by their letter dated 19 January 1989.

The Court consider whether it should proceed with the petition. Clear to the Court by respondent's letter dated 28 January 1989 they applied to have the matter adjourned to another date. The reason given was:

> We are indisposed on the said date owing to prior engagements.

I was not clear why respondent's Counsel wanted a postponement. Was it he was indisposed or not well or he had been committed owing to prior engagements. If he was indisposed, there was no medical evidence as such and if he was engaged, he did not explain where he was bearing in mind that the case in the High Court has been held to have priority over Lower Court cases. Then the Court also noticed that when the petition was before this fixed for hearing on 25 January 1989 the respondent was the one who asked for a postponement citing the reason that he had a criminal case in Kuala Lumpur Magistrate's Court fixed for that day but he was somewhat lucky as the file could not be traced that morning.

I decided I should proceed as the debt on which the petition was based was large and the list of supporting creditors were also many whose claims were totalling RM105,057.25. I was satisfied at that stage that the evidence was overwhelming that the respondent was unable to pay its debt and rightly should be wound up. I also found on the evidence before me the application for postponement was without merit. I then made an order in terms of the petition with cost to petitioner to be taxed. The respondent appeals.

Also found at [1990] 1 CLJ 247